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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2010-1012; FRL-9739-1]

Approval and Promulgation of Implementation Plans; Georgia 110(a)(1) and (2) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the State Implementation Plan (SIP) submissions, submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (EPD), as demonstrating that the State meets the SIP requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 annual and 2006 24-hour fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS), with noted exceptions. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an “infrastructure” SIP. Georgia certified that the Georgia SIP contains provisions that ensure the 1997 annual and 2006 24-hour PM₂ NAAQS are implemented, enforced, and maintained in Georgia (hereafter referred to as “infrastructure submission”). Georgia’s infrastructure submissions, provided to EPA on July 23,

2008, and supplemented on September 9, 2008 and October 21, 2009, address all the required infrastructure elements for the 1997 annual and 2006 24-hour PM₂ NAAQS. In addition, EPA is clarifying an inadvertent error included in the proposed approval for this rule.

DATES: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2010-1012. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-

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I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997 (62 FR 36852), EPA promulgated a new annual PM_{2.5} NAAQS and on October 17, 2006 (71 FR 61144), EPA promulgated a new 24-hour NAAQS. On June 15, 2012, EPA proposed to approve Georgia's July 23, 2008, and October 21, 2009, infrastructure submissions for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. *See* 77 FR 35909. A summary of the background for today's

final action is provided below. See EPA's June 15, 2012, proposed rulemaking at 77 FR 35909 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. The data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous PM NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below¹ and in EPA's October

¹ Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions

2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards.”

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.²
- 110(a)(2)(D): Interstate transport.³
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.⁴
- 110(a)(2)(J): Consultation with government officials; public notification; and prevention of significant deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today’s final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how Georgia’s SIP addresses 110(a)(2)(C).

² This rulemaking only addresses requirements for this element as they relate to attainment areas.

³ Today’s final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 and 2006 PM_{2.5} NAAQS.

⁴ This requirement was inadvertently omitted from EPA’s October 2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” but as mentioned above is not relevant to today’s final rulemaking.

II. This Action

EPA is taking final action to approve Georgia's infrastructure submissions as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, except for the elements noted above on which EPA is not taking action. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an "infrastructure" SIP. EPD certified that the Georgia SIP contains provisions that ensure the 1997 annual and 2006 24-hour PM_{2.5} NAAQS are implemented, enforced, and maintained in Georgia. Additionally, EPA is now clarifying an inadvertent error made in the proposed rule.

In the proposal, EPA inadvertently stated that Georgia had met each of its 105 grant commitments for fiscal year 2011. Georgia did not complete one of its 63 grant commitments from fiscal year 2011 – its commitment to develop and submit a National Emissions Inventory Quality Assurance Project Plan (QAPP). Nonetheless, as was explained in the proposed rule, EPA has determined that Georgia has provided necessary assurances that its SIP contains the adequate infrastructure requirements to address these types of issues as they arise, consistent with the obligation in CAA Section 110(a)(2)(E)(i). Further, EPA has a process to ensure such issues are addressed and EPA is currently working with Georgia to ensure that the State meets all of its commitments, including the outstanding 2011 grant commitment.

EPA received adverse comments on its June 15, 2012, proposed approval of portions of Georgia's July 23, 2008, and on October 21, 2009, infrastructure submissions (hereafter

“Georgia’s infrastructure submissions”). Today’s final action includes a response to adverse comments.

III. EPA’s Response to Comments

EPA received one set of comments on the June 15, 2012, proposed rulemaking to approve Georgia’s infrastructure submissions as meeting the requirements of sections 110(a)(1) and (2) of the CAA for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. A summary of the comments and EPA’s response are provided below.

Comment 1: The Commenter contends that Georgia’s SIP does not contain the requisite enforceable limits for PM_{2.5}, and therefore, EPA cannot approve the State’s infrastructure SIP submission with respect to section 110(a)(2)(A). The Commenter cites two primary reasons supporting this contention.

First, the Commenter contends that Georgia’s SIP does not currently provide adequate enforceable limitations for PM_{2.5} emissions from existing stationary sources. In support of this proposition, the Commenter notes a number of existing Georgia SIP provisions that address emissions of particulate matter generally or PM₁₀, but not PM_{2.5}. The Commenter further asserts that in the title V context, the State has concluded that at the time of the evaluation of the permit application, the source did not need to address PM_{2.5} emissions. Similarly, the Commenter states that existing stationary sources permitted prior to January 1, 2011, do not adequately control condensable PM_{2.5}, and implies that this should be addressed in the context of acting on the

State's infrastructure submittal. Finally, the Commenter contends that even in the case of a source permitted after January 1, 2011, the State has not required specific limitations on condensable PM and thus fails to control direct PM_{2.5} emissions at that source in a way that is relevant to action on the State's infrastructure SIP. The Commenter appears to be suggesting that this example evinces a SIP deficiency germane to EPA's determination respecting the sufficiency of the State's infrastructure SIP for purposes of section 110(a)(2)(A).

Second, the Commenter argues that EPA should not approve the State's infrastructure submittal because it contained references to several regional cap and trade rules as measures that would impose emissions limitations on PM_{2.5} precursors within the State. The Commenter raised three objections: (1) the Commenter argued that the Nitrogen Oxide (NOx) SIP Call, Clean Air Interstate Rule (CAIR), and Cross State Air Pollution Rule (CSAPR) cannot be considered enforceable emissions limitations because of their status; (2) the Commenter argued that cap and trade programs cannot be considered permanent and enforceable because they allow sources to purchase allowances or used banked credits rather than reducing emissions; and (3) the Commenter argued that the D.C. Circuit has held that regional cap and trade programs cannot "satisfy an area-specific statutory mandate."⁵

Response 1: EPA disagrees with the Commenter's contention that the State's infrastructure SIP submission is not approvable with respect to section 110(a)(2)(A) because it does not contain adequate enforceable emissions limitations on PM_{2.5} and PM_{2.5} precursors.

⁵ The Commenter cites *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009).

With respect to the Commenter's specific concerns about the adequacy of emissions limitations at stationary sources, the Commenter is incorrect with respect both to the scope of what is germane to an action on an infrastructure SIP and with respect to when certain regulatory requirements for stationary sources became operative. This comment pertains to EPA's action on an infrastructure SIP, which must meet the general structural requirements described in section 110(a)(2)(A). Section 110(a)(2)(A) of the CAA states that each implementation plan submitted by a State under the Act shall be adopted by the State after reasonable notice and public hearing. Each such plan shall include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act.

The Commenter seems to believe that in the context of an infrastructure SIP submission, section 110(a)(2)(A) explicitly requires that a state adopt all possible new enforceable emission limits, control measures and other means developed specifically for attaining and maintaining the new NAAQS within the State. EPA does not believe that this is a reasonable interpretation of the provision with respect to infrastructure SIP submissions. Rather, EPA believes that different requirements for SIPs become due at different times depending on the precise applicable requirements in the CAA. For example, some state regulations are required pursuant to CAA section 172(b), as part of an attainment demonstration for areas designated as nonattainment for the standard. The timing of such an attainment demonstration would be after promulgation of a NAAQS, after completion of designations, and after the development of the applicable nonattainment plans. The Commenter seems to believe that EPA should disapprove a states infrastructure SIP if the State has not already developed all the substantive emissions limitations

that may ultimately be required for all purposes, such as attainment and maintenance of the NAAQS as part of an attainment plan for a designated nonattainment area.

In particular, the Commenter focuses upon the adequacy of emissions limitations for specific stationary sources in Georgia that arose in permit actions – Plant Bowen’s title V Permit and Plant Washington’s PSD permit - to support its argument that Georgia’s SIP does not require adequate enforceable emissions limitations for PM_{2.5} for existing sources. As described above, for purposes of approving Georgia’s infrastructure submittal as it relates to section 110(a)(2)(A), EPA’s evaluation is limited to whether the State has adopted, as necessary and appropriate, enforceable emission limitations and other control measures to meet applicable structural requirements of the CAA. Today’s action does not involve case specific evaluations of specific permits. In this action, EPA is not evaluating whether or not the State has correctly imposed emissions limitations on each stationary source for purposes of meeting requirements for PSD permits or embodied in title V permits. Moreover, EPA notes that the Commenter is also incorrect with respect to its allegations concerning the appropriate treatment of condensables in emissions limits for stationary sources. In the implementation regulations for the PM_{2.5} NAAQS, EPA separately authorized states to elect not to address condensable emissions in their air pollution programs until January 1, 2011.⁶ Thus, the State was not required to address condensables in stationary source permits identified in the comment. For example, the Commenter is incorrect with respect to the PSD permit for Plant Washington because the permit for this source was issued on April 8, 2010, prior to January 1, 2011, and thus the permit was not

⁶ See Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}), 73 FR 28321 (May 16, 2008); 40 CFR 51.166(b)(49)(vi); 40 CFR 52.21(b)(50)(vi).

required to address condensables.⁷ The State's compliance with what EPA authorized with respect to condensables is not grounds for disapproval of the State's infrastructure SIP submission.

For purposes of section 110(a)(2)(A), and for purposes of an infrastructure SIP submission, EPA believes that the proper inquiry is whether the state has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon it. As stated in EPA's proposed approval for this rule, to meet section 110(a)(2)(A), Georgia submitted a list of existing emission reduction measures in the SIP that control PM_{2.5} emissions. These include all the required measures previously adopted for the control of PM_{2.5} and PM_{2.5} precursor pollutants. The Commenter identifies a number of ways in which it believes that Georgia's SIP fails to meet such current requirements, but EPA concludes that the Commenter has not identified any deficiency that justifies disapproval of the infrastructure SIP submission in this action.

With respect to the Commenter's concern about the identification of cap and trade programs within the State's infrastructure SIP submission, the Commenter is also incorrect with respect to the scope of what is germane to section 110(a)(2)(A), and with respect to its assertions about such cap and trade programs in general.

⁷ Although an amendment to the permit was issued on November 18, 2011, the purpose of the amendment was to add case-by-case maximum achievable control technology (MACT) requirements for organic and non-mercury metal hazardous air pollutants (HAP) under section 112(g) of the Act. Pursuant to 40 CFR Part 63, states may use a preconstruction review process to make a section 112(g) case-by-case MACT determination. However, pursuant to section 112(b)(6), the Act specifically excludes HAP from the PSD permitting requirements. *See also* 40 CFR. §52.21(b)(50)(v). While the State may have subsequently added the section 112(g) determination to a permit that included PSD requirements, the revision of the construction permit to address the case-by-case MACT requirements was not a revision or reopening of the PSD requirements. The portions of the permit satisfying PSD requirements were final on April 8, 2010, before the requirement to account for condensables became effective.

The Commenter asserts that emissions limitations of sulfur dioxide and NO_x from the NO_x SIP Call, CAIR, and CSAPR are not “enforceable emissions limitations” because of the legal status of each of those rules. The Commenter asserts that the NO_x SIP call “effectively no longer exists,” that CAIR “has been remanded and effectively no longer exists,” and that at the time of the comment, CSAPR had been stayed and was subject to litigation. The Commenter also asserts that reductions from such cap and trade rules cannot be considered permanent and enforceable merely because they allow for the purchase and transfer of allowances or the use of banked credits. Finally the Commenter claims that the D.C. Circuit Court of Appeals recently held that EPA cannot allow use of cap and trade programs to satisfy an area-specific statutory mandate.

EPA disagrees with the Commenter’s position that emissions reductions associated with the NO_x SIP Call cannot be considered to be permanent and enforceable. The Commenter’s first argument – that the reductions are not permanent and enforceable because the NO_x SIP Call has been replaced – is based on a misunderstanding of the relationship between CAIR and the NO_x SIP Call. While the CAIR ozone-season NO_x trading program replaced the ozone-season NO_x trading program developed in the NO_x SIP Call (70 FR 25290), nothing in CAIR relieved states of their NO_x SIP Call obligations. In fact, in the preamble to CAIR, EPA emphasized that the states and certain units covered by the NO_x SIP Call but not CAIR must still satisfy the requirements of the NO_x SIP Call. EPA provided guidance regarding how such states could meet these obligations.⁸ In no way did EPA suggest that states could disregard their NO_x SIP

⁸ EPA guidance regarding the NO_x SIP Call transition to CAIR can be found at <http://www.epa.gov/airmarkets/progsregs/cair/faq10.html>. EPA guidance regarding the NO_x SIP Call transition for CSAPR can be found at <http://www.epa.gov/crossstaterule/faqs.html>.

Call obligations. *See* 70 FR 25290. For NOx SIP Call states, the CAIR NOx ozone program provides a way to continue to meet the NOx SIP Call obligations for electric generating units (EGUs) and large non-electric generating units (non-EGUs). In addition, the antibacksliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NOx SIP Call, including statewide NOx emission budgets, continue to apply. In sum, the requirements of the NOx SIP Call remain in force. They are permanent and enforceable as are state regulations developed to implement the requirements of the NOx SIP Call. Similarly, EPA disagrees with the Commenter's characterization of the status of CAIR and CSAPR. When the court stayed CSAPR as noted by the Commenter, it ordered EPA to continue to administer CAIR. When the court issued its opinion to vacate and remand CSAPR, it also ordered EPA to continue to administer CAIR pending development of a valid replacement. Thus, at this juncture, CAIR remains in place and EPA is continuing to implement and enforce it. Consequently, all SIP provisions implementing CAIR also remain enforceable at this time under the court opinion.

EPA also disagrees with the Commenter's second argument – that the reductions associated with the NOx SIP Call, CAIR, or CSAPR could not be considered permanent and enforceable merely because they are trading programs. There is no support for the Commenter's argument that states cannot rely on such programs as a valid component of their SIPs to achieve necessary reductions of emissions simply because the mechanism used to achieve the reductions is an emissions trading program. As a general matter, trading programs establish mandatory caps on emissions and permanently reduce the total emissions allowed by sources subject to the programs. The emission caps and associated controls are enforced through the associated SIP rules or Federal Implementation Plans (FIPs). Any purchase of allowances and increase in emissions by a utility necessitates a corresponding sale of allowances and reductions in

emissions by another utility. Given the regional nature of PM_{2.5}, the emission reductions will have an air quality benefit that will compensate, at least in part, for the impact of any emission increase.

In addition, the case cited by the Commenter, *NRDC v. EPA*, 571 F.3d 1245 (D.C.Cir. 2009), does not support the Commenter's position. That case addressed EPA's determination that the "reasonably available control technology" (RACT) requirement for nonattainment areas was satisfied by the NOx SIP Call trading program. The court held that because EPA had not demonstrated that the trading program would result in sufficient reductions within nonattainment areas to meet the RACT requirement, its determination that the program satisfied the RACT requirement (a specific nonattainment area requirement) was not supported. *Id.*, 1256 – 58. The court explicitly noted that EPA might be able to reinstate the provision providing that compliance with the NOx SIP Call satisfies NOx RACT for EGUs for particular nonattainment areas if, upon conducting a technical analysis, it could demonstrate that the NOx SIP Call results in greater emission reductions in a nonattainment area than would be achieved if RACT level controls were installed on the affected sources within the nonattainment area. *Id.* at 1258. Thus, EPA disagrees with the Commenter's assertion that the case stands for the proposition that cap and trade programs can never satisfy a statutory mandate for area-specific emissions controls. Moreover, EPA's action on a state's infrastructure SIP does not entail an evaluation of whether that state has met the more specific nonattainment area requirements for RACT that may become relevant in later actions on a SIP submission designed by the state to meet nonattainment area requirements. For purposes of evaluating a state's infrastructure SIP submission, EPA is limiting its review to ensuring that the State meets basic structural SIP requirements. In the event that a state has to develop a SIP submission to meet nonattainment area requirements, the state and

EPA will at that time evaluate whether the submission meets the separate statutory requirements for nonattainment areas.

Comment 2: The Commenter contends that Georgia's Ambient Air Quality Monitoring Program is incomplete because it does not meet the federal reporting requirements and utilizes spatial scales which could lead to misrepresentations of PM_{2.5} concentrations. The Commenter explains that Georgia fails to incorporate any micro and middle spatial scales for PM_{2.5}, leading to potentially inaccurate reporting of PM_{2.5} concentrations. For this reason, the Commenter states that EPA cannot make the determination that Georgia's air quality monitoring and data systems related to the 1997 annual and 2006 24-hour PM_{2.5}NAAQS are adequate. The Commenter explains that Georgia only utilizes the neighborhood spatial scale for monitoring PM_{2.5}, with the exception of a PM_{2.5} background site. The Commenter cites to 40 CFR Part 58, Appendix D (4.7.1(c)) for the proposition that there are circumstances where a more specific spatial scale is necessary to accurately represent the PM_{2.5} concentrations. Specifically, the Commenter explains that microscale is appropriate for "areas such as downtown street canyons and traffic corridors where the general public would be exposed to maximum concentrations from mobile sources." The Commenter makes certain statements about Atlanta, including traffic and asthma issues, and concludes that microscale would be appropriate for Atlanta. The Commenter concludes by stating that Georgia should explore whether such downtown, high maximum concentration areas occur and accordingly utilize the appropriate spatial scales.

Response 2: EPA disagrees with the Commenter’s assessment that Georgia’s Ambient Air Quality Monitoring Program is incomplete. Pursuant to CAA section 110(a)(2)(B), each SIP shall “provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.” Among other requirements that EPA evaluates to determine if the infrastructure SIP submission meets the applicable section 110(a)(2)(B) requirements, the Agency considers whether the state has submitted the most recent annual monitoring plan, and whether EPA has approved that monitoring plan as meeting the applicable regulatory requirements and consistent with applicable guidance. The latter approval addressed whether the state monitors air quality for the relevant pollutant at appropriate locations throughout the state using EPA approved federal reference method or equivalent monitors, and whether it submits data to EPA’s Air Quality System (AQS) in a timely manner.

As noted in EPA’s proposed rule for this action, Georgia’s Rules 391-3-1-.02(3), “Sampling,” and 391-3-1-.02(6), “Source Monitoring,” along with the Georgia Network Description and Ambient Air Monitoring Network Plan provide for an ambient air quality monitoring system in the State. Annually, EPA approves the ambient air monitoring network plan for the state agencies including EPD. Prior to submission to EPA for approval, the State makes the annual monitoring plan available for public inspection and comment in its own administrative process. In August 2011, Georgia submitted its monitoring network plan to EPA, and on October 21, 2011, EPA approved Georgia’s monitoring network plan.

With regard to the Commenter’s statements pertaining to the adequacy of monitoring in the Atlanta area, today’s action does not involve specific evaluation for the Atlanta Area; but rather, Georgia’s compliance with section 110(a)(2)(B) of the CAA for monitoring requirements

statewide. As explained above, Georgia's infrastructure SIP submission complies with section 110(a)(2)(B) because it demonstrates that the State has met current monitoring requirements for this NAAQS and is thus approvable. The Commenter's concerns about the adequacy of monitoring in the Atlanta area in the future should be raised in the appropriate context, such as during the State's development of monitoring systems. For purposes of today's final action on Georgia's infrastructure submission, EPA has concluded that Georgia's monitoring program is adequate and thus consistent with the requirements of section 110(a)(2)(B) for this type of submission.

Comment 3: The Commenter claims that Georgia's SIP does not contain required provisions for PM_{2.5} PSD increments promulgated in an October 20, 2010, EPA rule. The Commenter asserts that states are required to include these increments in their SIPs prior to EPA approval of their infrastructure SIP and cites 40 CFR 51.166(c) and EPA's September 25, 2009, "Guidance on SIP Elements Required under Sections 110(a)(1) and (2) for the 2006 24-hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)," for support. Further, the Commenter states that this "lack of inclusion renders Georgia's SIP inadequate to address PSD permitting, and, thus, the EPA cannot determine that 'Georgia's SIP and practices are adequate for program enforcement of control measures including review of proposed new sources related to the 1997 and 2006 24-hour PM_{2.5} NAAQS.'"

Response 3: EPA does not agree with the Commenter's assertion that the lack of inclusion of the updated PM_{2.5} increments renders Georgia's SIP inadequate to address PSD permitting.

Pursuant to the 2010 PM_{2.5} New Source Review (NSR) Rule and CAA section 166(b), states were not required to submit a revised SIP addressing the PM_{2.5} increments until July 20, 2012. The Agency proposed action on the Georgia infrastructure SIP in a notice signed on June 1, 2012.⁹ Therefore, on the date that the proposed rule was signed by the Agency, the PM_{2.5} increments were not required to be included in the Georgia SIP in order for the State to meet the PSD requirements of sections 110(a)(2)(C) and (J) of the Act.

The Commenter's concerns here relate to the timing of Agency action on collateral, yet related, SIP submissions. These concerns highlight an important overarching question that the EPA has to confront when assessing the various infrastructure SIP submittals addressed in the proposed rule: how to proceed when the timing and sequencing of multiple related SIP submissions impact the ability of the State and the Agency to address certain substantive issues in the infrastructure SIP submission in a reasonable fashion.

It is appropriate for EPA to take into consideration the timing and sequence of related SIP submissions as part of determining what it is reasonable to expect a state to have addressed in an infrastructure SIP submission for a NAAQS at the time when the EPA acts on such submission. EPA has historically interpreted section 110(a)(2)(C) and section 110(a)(2)(J) as requiring EPA to assess a state's infrastructure SIP submission with respect to the then-applicable and federally enforceable PSD regulations required to be included in a state's implementation plan at the time EPA takes action on the SIP. However, EPA does not consider it reasonable to interpret section 110(a)(2)(C) and section 110(a)(2)(J) as requiring EPA to propose to disapprove a state's

⁹ Although the notice was published by the Federal Register on June 15, 2012, the notice was signed by the Acting Regional Administrator on June 1, 2012, before the statutory deadline for submission of the SIP revision addressing the PM_{2.5} increments.

infrastructure SIP submissions because the state had not yet, at the time of proposal, made a submission that was not yet due for the 2010 PM_{2.5} NSR Rule. To adopt a different approach by which EPA could not act on an infrastructure SIP, or at least could not approve an infrastructure SIP, whenever there was any impending revision to the SIP required by another collateral rulemaking action would result in regulatory gridlock and make it impracticable or impossible for EPA to act on infrastructure SIPs if EPA is in the process of revising collateral PSD regulations. EPA believes that such an outcome would be an unreasonable reading of the statutory process for the infrastructure SIPs contemplated in section 110(a)(1) and (2).

EPA acknowledges that it is important that these additional PSD program revisions be evaluated and approved into a state's implementation plan in accordance with the CAA, and the EPA intends to address the PM_{2.5} increments in a subsequent rulemaking.

EPA also notes that major sources in Georgia are subject to the PM_{2.5} increments pursuant to the version of the regulation, GA Rule 391-3-1-.02(7) - Prevention of Significant Deterioration of Air Quality, currently in effect in Georgia. Because the regulations relating to PM_{2.5} increments are currently effective and enforceable as a matter of State law, as of August 9, 2012, EPA in the interim believes that proposed major sources in Georgia are being required as a matter of State law to comply with the PSD requirements like PM_{2.5} increments and thus that these sources are not being treated differently under state law than similar sources in other States that have adopted and submitted SIP revisions to include the increments. Thus, EPA does not believe that approving the State's infrastructure SIP submissions at this time will lead to major sources in Georgia being treated differently than similar sources in the other states as a factual matter. If the Commenter determines that sources are not being evaluated in accordance with

applicable State law requirements during the interim before EPA acts on a later SIP submission, those concerns can be addressed in the State's permitting process.

Comment 4: The Commenter states that Georgia must provide assurances that the State will have adequate personnel, funding, and authority to carry out the SIP. The Commenter notes that EPD receives money from federal grants, and from permitting fees and that EPD also receives a significant portion of its funding from the State of Georgia. The Commenter explains that, in recent years, the EPD's funds from the State of Georgia have significantly declined and the Commenter believes that continued cuts in EPD's budget cast doubt on EPD's ability to adequately administer its air program. Further, the Commenter states that Georgia does not seem to be completing all of the requirements of its federal grants, putting those grants in jeopardy.

Response 4: EPA does not agree with the Commenter's contention that Georgia does not have adequate personnel and funding to carry out its implementation plan. Section 110(a)(2)(E)(i) requires that each implementation plan provide necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan. EPA does not believe, and the Commenter has not demonstrated, that the State funding levels described in the comment contravene Georgia's assurances that the State has adequate personnel and funding to carry out its implementation plan. Georgia's infrastructure SIP submission indicated that the State believes that it has sufficient resources to meet its obligations. At this juncture, EPA does not see evidence that the State's resources are in fact inadequate.

As the Commenter notes, Georgia did not finalize one of its sixty-three 2011 grant commitments.¹⁰ Notwithstanding this fact, and as was explained in the proposed rule, EPA has determined that Georgia has provided necessary assurances that its SIP contains the adequate infrastructure requirements to address these types of issues as they arise, consistent with the obligation in CAA Section 110(a)(2)(E)(i). EPA has a process to ensure issues such as this are addressed and the Agency is currently working with Georgia to ensure that the State meets all of its commitments, including the outstanding 2011 grant commitment reference by Commenter. The fact that a process is in place to resolve the outstanding commitment supports EPA's approval of Georgia's infrastructure SIP.

IV. Final Action

As already described, EPD has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that 1997 annual and 2006 24-hour PM_{2.5} NAAQS are implemented, enforced, and maintained in Georgia. EPA is taking final action to approve Georgia's July 23, 2008, and October 21, 2009, submissions, with noted exceptions for 1997 annual and 2006 24-hour PM_{2.5} NAAQS because these submissions are consistent with section 110 of the CAA. Today's action is not approving any specific rule, but rather making a determination that Georgia's already approved SIP meets certain CAA requirements. In addition, EPA is today clarifying the inadvertent error contained in the proposal approval for this rule as described above.

¹⁰ EPA inadvertently stated in the proposed rule for this action that Georgia had met each of its section 105 grant commitments for 2011. The Agency is hereby correcting that statement to note that Georgia did not meet its commitment to develop and submit a National Emissions Inventory QAPP.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping
requirements, Volatile organic compounds.

Dated: September 27, 2012

A. Stanley Meiburg

Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52 – Approval and Promulgation of Implementation Plans

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

2. Section 52.570(e) is revised to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-Approved Georgia non-regulatory provisions.

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
1. High Occupancy Vehicle (HOV) lane on I-85 from Chamblee-Tucker Road to State Road 316. High Occupancy Toll (HOT) lane on I-85 from Chamblee-Tucker Road to State Road 316	Atlanta Metropolitan Area	11/15/93 and amended on 6/17/96 and 2/5/10	3/18/99, 4/26/99 and 11/5/09.	
2. Clean Fuel Vehicles Revolving Loan Program	Atlanta Metropolitan Area	6/17/96	4/26/99.	
3. Regional Commute Options Program and HOV Marketing Program	Atlanta Metropolitan Area	6/17/96	4/26/99.	
4. HOV lanes on I-75 and I-85	Atlanta Metropolitan Area	6/17/96	4/26/99.	

5. Two Park and Ride Lots: Rockdale County-Sigman at I-20 and Douglas County-Chapel Hill at I-20	Atlanta Metropolitan Area	6/17/96	4/26/99.	
6. MARTA Express Bus routes (15 buses)	Atlanta Metropolitan Area	6/17/96	4/26/99.	
7. Signal preemption for MARTA routes #15 and #23	Atlanta Metropolitan Area	6/17/96	4/26/99.	
8. Improve and expand service on MARTA's existing routes in southeast DeKalb County	Atlanta Metropolitan Area	6/17/96	4/26/99.	
9. Acquisition of clean fuel buses for MARTA and Cobb County Transit	Atlanta Metropolitan Area	6/17/96	4/26/99.	
10. ATMS/Incident Management Program on I-75/I-85 inside I-285 and northern ARC of I-285 between I-75 and I-85	Atlanta Metropolitan Area	6/17/96	4/26/99.	
11. Upgrading, coordination and computerizing intersections	Atlanta Metropolitan Area	6/17/96	4/26/99.	
12. [Reserved]				
13. Atlantic Steel Transportation Control Measure	Atlanta Metropolitan Area	3/29/00	8/28/00.	
14. Procedures for Testing and Monitoring Sources of Air Pollutants	Atlanta Metropolitan Area	7/31/00	7/10/01.	
15. Enhanced Inspection/Maintenance	Atlanta Metropolitan Area	9/20/00	7/10/01.	

Test Equipment, Procedures and Specifications				
16. Preemption Waiver Request for Low-RVP, Low-Sulfur Gasoline Under Air Quality Control Rule 391-3-1-.02(2)(bbb)	Atlanta Metropolitan Area	5/31/00	2/22/02.	
17. Technical Amendment to the Georgia Fuel Waiver Request of May 31, 2000	Atlanta Metropolitan Area	11/9/01	2/22/02.	
18. Georgia's State Implementation Plan for the Atlanta Ozone Nonattainment Area	Atlanta Metropolitan Area	7/17/01	5/7/02.	
19. Post-1999 Rate of Progress Plan	Atlanta Metropolitan Area	12/24/03	7/19/04, 69 FR 42884.	
20. Severe Area Vehicle Miles Traveled (VMT SIP) for the Atlanta 1-hour severe ozone nonattainment area	Atlanta 1-hour ozone severe nonattainment area	6/30/04	6/14/05, 70 FR 34358.	
21. Atlanta 1-hour ozone attainment area 2015 maintenance plan	Atlanta severe 1-hour ozone maintenance area	2/1/05	6/14/05, 70 FR 34660.	
22. Attainment Demonstration for the Chattanooga Early Action Area	Walker and Catoosa Counties	12/31/04	8/26/05, 70 FR 50199.	
23. Attainment Demonstration for the Lower Savannah-Augusta Early Action Compact Area	Columbia and Richmond Counties	12/31/04	8/26/05, 70 FR 50195.	
24. Alternative Fuel Refueling Station/Park and Ride Transportation	Douglas County, GA	9/19/06	11/28/06, 71 FR 68743.	

Center, Project DO-AR-211 is removed				
25. Macon 8-hour Ozone Maintenance Plan	Macon, GA encompassing a portion of Monroe County	6/15/07	9/19/07, 72 FR 53432.	
26. Murray County 8-hour Ozone Maintenance Plan	Murray County	6/15/07	10/16/07, 72 FR 58538.	
27. Atlanta Early Progress Plan	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton counties	1/12/07	2/20/08, 73 FR 9206.	
28. Rome; 1997 Fine Particulate Matter 2002 Base Year Emissions Inventory	Floyd County	10/27/2009	1/12/12, 77 FR 1873.	
29. Chattanooga; Fine Particulate Matter 2002 Base Year Emissions Inventory	Catoosa and Walker Counties	10/27/09	2/8/12; 77 FR 6467.	
30. 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards	Georgia	10/13/2007	2/6/2012, 77 FR 5706.	
31. Atlanta 1997 Fine Particulate Matter 2002 Base Year Emissions Inventory	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entirety and portions of	07/06/2010	3/1/2012, 77 FR 12487.	

	Heard and Putnam Counties			
32. Macon 1997 Fine Particulate Matter 2002 Base Year Emissions Inventory	Bibb County and Monroe County	8/17/2009	3/02/12, 77 FR 12724.	
33. Atlanta 1997 8-Hour Ozone 2002 Base-Year Emissions Inventory	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entirety	10/21/2009	4/24/2012, 77 FR 24399.	
34. Regional Haze Plan	Statewide	2/11/10	6/28/12, 77 FR 38501.	
35. Regional Haze Plan Supplement (including BART and Reasonable Progress emissions limits)	Statewide	11/19/10	6/28/12, 77 FR 38501	
36. 110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards	Georgia	7/23/2008	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	With the exception of 110(a)(2)(D)(i)
37. 110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards	Georgia	10/21/2009	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	With the exception of 110(a)(2)(D)(i)

<FRDOC> [FR Doc. 2012-25855 Filed 10-19-12; 8:45 am]

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